IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

WP(C).No. 2887 of 2006(R)

PETITIONER:

V.P. MATHAI, PWD CONTRACTOR,
PAZHAYIDAYIL HOUSE, RAMAMANGALAM-686 663.

BY ADV. SRI.K.L.VARGHESE
SMT.SANTHA VARGHESE

RESPONDENTS:

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1. THE STATE OF KERALA REPRESENTED BY
THE SECRTARY TO GOVERNEMNT, PUBLIC WORKS &
TRANSPORT DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE SUPERINTENDEING ENGINEER,
PWD (R & B) CENTRAL CIRCLE,
ALUVA-683 101.

3. THE EXECUTIVE ENGINEER,
PWD ROADS DIVISION, IDUKKI.

BY GOVERNMENT PLEADER SMT.R.BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF SELECTION NOTICE DT.11.5.1998 ISSUED BY R2 TO PETITIONER.

P2: TRUE COPY OF JUDGMENT DT.8.9.2005 IN W.P.(C) NO.25460/2005 OF THIS HON'BLE COURT.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.2887 of 2006

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Dated this the 5th day of March, 2007.

JUDGMENT

This W.P. is filed for direction to the respondents to release security deposit and retention amount withheld by respondents and along with it bill amount payable to the petitioner for the work executed by him. Respondents have filed a statement stating that the work awarded to the petitioner was not executed by him and consequently in terms of tender conditions, contract was cancelled at the risk and cost of the petitioner. The security amount and retention amount are also stated to be forfeited in terms of the tender conditions. Counsel for the petitioner has relied on decision of this court in ABDULLA V. STATE OF KERALA 2001(3) KLT 903 and submitted that according to the judgment, the forfeiture of security deposit and retention amount are illegal. It is stated in the counter statement that when work was rearranged after cancellation of contact with the petitioner, there was no loss to the Government on account of low rate quoted by the subsequent contractor. However, it is not mentioned whether the part payment due to the petitioner is also reckoned while determining whether there is loss on rearrangement of work or not. In any case since the

rearrangement of work has not led to loss to Government, it is for the second respondent to consider petitioner's claim with reference to the judgment abovereferred and in the light of the tender conditions and release the eligible payments including security deposit and retention amount, if forfeiture is illegal under the above judgment. The petitioner is directed to produce copy of the abovereferred judgment along with a copy of this judgment before second respondent for him to reconsider the matter, pass orders and grant eligible relief, which should be done within a period of two months from the date of production of copy of this judgment by the petitioner.

C.N.RAMACHANDRAN NAIR
Judge

pms